

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TEAIRRA CHISM,	)	
	)	
Plaintiff,	)	8:05CV124
	)	
v.	)	
	)	
SEPTEMBERFEST, SEPTEMBERFEST	)	MEMORANDUM AND ORDER
OMAHA, CITY OF OMAHA, OMAHA	)	
POLICE DEPARTMENT, STATE OF	)	
NEBRASKA, NEBRASKA STATE	)	
PATROL, ALAN EBERLE, GORDON	)	
ANVILLE, THOMAS WARREN, PAUL	)	
KRATZ, RUSSELL LEWIS, HAROLD	)	
SCOTT, DANA THROENER, TOM	)	
NESBITT, OMAHA POLICE CHIEF,	)	
and JOHN DOES 1-10,	)	
	)	
Defendants.	)	
	)	

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Timothy Ashford has moved to withdraw as counsel for the plaintiff. Filing 58. This court's filing 61 order granted the motion to withdraw "effective upon the filing of a certificate of service or affidavit indicating that the plaintiff has been served with a copy of this order." Filing 61.

Filing 61 was entered on October 25, 2005 and gave the plaintiff twenty days from the date of the order, that being November 14, 2005, to have new counsel enter an appearance on her behalf, file a motion along with supporting evidence for appointment of counsel by the court, or advise the court that she will proceed without counsel. The order stated that "[i]f none of these actions is taken within the next twenty days, this case will be subject to dismissal." Filing 61.

The court notes that Mr. Ashford filed a motion to appoint counsel for the plaintiff on November 1, 2005, (filing 62), but

this motion was not supported by any evidence of plaintiff's present financial status or her reasons for believing counsel should be appointed. To date, no substitute counsel has appeared on the plaintiff's behalf, and the plaintiff has not advised the court that she intends to appear without counsel. Therefore, assuming the plaintiff herself was served with a copy of the filing 61 memorandum and order, this case would be subject to dismissal.

However, it appears from the record that the plaintiff was never advised of or served with a copy of filing 61. The filing 62 motion for appointment of counsel states Mr. Ashford had not, as of November 1, 2005, had contact with the plaintiff. The court's record states that Mr. Ashford mailed his motion to withdraw to the plaintiff on November 10, 2005. This certificate of service includes the plaintiff's home address. Filing 63. However, there is no certificate of service indicating that filing 52 was ever served on plaintiff Teairra Chism.

This case has been pending for eight months, some claims were dismissed (see filing 26), and the remaining claims must now progress for final resolution of this case.

IT THEREFORE HEREBY IS ORDERED:

1. The Clerk of the District Court shall serve a copy of this order on the plaintiff by mailing it to her at the address set forth in filing 63. Counsel's motion to withdraw, filing 58, is granted, effective upon such service by the clerk.
2. Plaintiff is given 20 days from the date of this order in which to either: (1) obtain the services of substitute counsel and have that attorney file an appearance in her behalf; (2) file a motion in this court for the appointment of counsel, setting forth her present financial status, and the reasons she believes counsel should be appointed; or (3) indicate, by

pleading, that she will proceed in this case without counsel. If none of these actions is taken within the next twenty days, this case will be subject to dismissal.

DATED this 28th day of November, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge